



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. Mike Hines
Executive Director
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR95-1524

Dear Mr. Hines:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32708.

The Texas Commission on Fire Protection (the "commission") received a request for information held by the commission concerning a certain individual. You state that the commission has released most of the individual's licensing file to the requestor. You contend, however, that information relating to the commission's criminal history review of the individual is excepted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor in accordance with state law and

federal regulations. See Open Records Decision No. 565 (1990). The information submitted for our review, however, does not appear to have been disseminated to the commission by NCIC, TCIC, or DPS. In fact, you state that the individual who is the subject of the information provided it to the commission. Accordingly, the information is not confidential under state or federal law.

Section 552.101 also excepts information that is protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information ... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

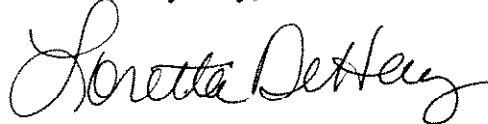
540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

We do not believe that the requested information is protected by common-law privacy primarily because the subject of the records provided the information to the commission; the commission did not independently compile it. See *United States Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989) (where individual's CHRI is compiled or summarized by governmental entity, the information takes on character that implicates individual's right of privacy under the federal Freedom of Information Act in manner that the same individual records in uncompiled state do not). Moreover, because the commission has authority to use the requested information as a basis to deny or revoke a license, V.T.C.S. art. 6252-13c, and the individual provided the information to the commission as part of his license renewal process, we believe there is a legitimate public interest in the submitted information. See Open Records Decision No. 408 (1984) (there is legitimate public interest in knowing names of persons arrested and indicted for felony offenses, even when indictment is later dismissed). Accordingly, you may not withhold the requested information under section 552.101 as information made confidential by common-law privacy.

We note, however, that the submitted records contain the individual's social security number. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We caution, however, that a governmental body may be required to obtain a person's social security number under laws that predate October 1, 1990; a social security number obtained under a law that predates October 1, 1990, is not made confidential by the 1990 amendments to the Social Security Act. Based on the information that you have provided, we are unable to determine whether the social security number at issue is confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LBC/rho

Ref: ID# 32708

Enclosures: Submitted documents

cc: Mr. Patrick C. McDonnell
Reporter
El Paso Herald-Post
P.O. Box 20
El Paso, Texas 79999
(w/o enclosures)